ARTICLE APPEARED
ON PAGE A23

NEW YORK TIMES
5 SEPTEMBER 1980

IN THE NATION

Killing Freedom To Save It

By Tom Wicker

On June 24, a Justice Department spokesman appeared before the Senate Intelligence Committee to oppose a bill making it a crime for anyone to publish information — whether or not classified — leading to the identification of a covert agent of the Central Intelligence Agency.

On Aug. 19, the same spokesman told a House subcommittee that the measure was all right after all. This week the House Judiciary Committee approved it by 21 to 8, with the full House expected to follow suit. The Senate, where a subcommittee will hold hearings today, apparently offers the only chance to stop this dangerous and unnecessary legislation that stabs the First Amendment to its heart.

Why did the Carter Administration change its mind? The Justice Department says its objections were removed when the bill's language was changed to require that disclosures, to be criminal, had to be part of a "pattern of activities intended to expose agents."

More likely, the Administration jumped on the bandwagon after July 4, when the home of a man alleged to be the C.I.A. station chief in Jamaica was attacked with automatic weapons fire, after disclosure of his name and address in the so-called Covert Action Information Bulletin. In an election year, the disclosure legislation immediately became a popular cause in Congress.

Finally, it's an election year for Jimmy Carter, too, and his opponents are charging that he's soft on national security and has let down the nation's guard. One way to riposte is to take the kind of hard-nosed, know-nothing stand exemplified by the bill's principal Republican backer, Representative Henry J. Hyde of Illinois, who told the Judiciary Committee that if people — just anyone — published the names of C.I.A. agents, "They should be treated like the criminals they are," not "permitted to hide" behind the First Amendment.

But the legislation now moving rapidly through Congress does not aim itself exclusively at the Covert Action Information Bulletin, or even at ex-C.I.A. agents who disclose agency secrets, or former Government employees who violate secrecy oaths or classification rules. It in no way limits itself to those who disclose classified information. It makes no exception for the publication of information already available in public records.

Instead, this sweeping legislation, sowing widely the seeds of an Official Secrets Act, would make a criminal of anyone who "discloses, with the intent to impair or impede the foreign intelligence activities of the United States, to any individual not authorized to receive classified information, any information that identifies a covert agent . . ."

That the Senate version would require such disclosure to be part of a "pattern of activities intended to disclose agents" is only a faint improvement, whatever the Carter Administration might claim. A reporter publishing, say, a series of articles could be demonstrating such a pattern, as might one who had published a number of such articles over the years. Yet, those articles might disclose reprehensible C.I.A. attempts to assassinate foreign leaders, or to infiltrate domestic organizations, or to overthrow legitimate governments.

Nor is the requirement of "intent to impair or impede . . . foreign intelligence activities" a saving grace. That might be precisely the intent, and legitimately so, of articles that would expose in advance and thus prevent something like the Bay of Pigs fiasco. Such intent might also be "established" if the C.I.A. had asked a reporter in advance not to publish a story, for reasons however self-serving, and he or she published it anyway.

The key phrases are "any information" if disclosed to "any individual not authorized to receive classified information." Taken together, they mean that *any* information — no matter how obtained, even from a public and unclassified record — published by anybody in virtually any form, if it could be read to disclose an agent's identity, would be a crime. Such legislation would impose a prior restraint unprecedented in American history, even on information that may already be in the public domain.

It would give the C.I.A., for example, just the weapon it wants to hide, or prosecute disclosures of, embarrassing or damaging misdeeds, failures and illegalities — spying on Americans in America, or helping a President to cover up criminal activities, or infiltrating the clergy. Reporting such stories, even if clearly in the public interest, would be virtually impossible without risking disclosure of some agent's identity — or at least risking that the C.I.A. would claim that such disclosure had resulted.

How can Stansfield Turner, the C.I.A. Director, argue that this blatant power grab is "vital to the maintenance of an effective intelligence apparatus and the successful conduct of United States foreign policy"? That is to say that only if free American institutions are undermined from within can we be successful in the world. But what is success, if not the protection and maintenance of those same free institutions?